

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NUMBER: \_\_\_\_\_

JESSE SCHWENKER,

Plaintiff,

vs.

ART PLUMBING AIR CONDITION  
AND ELECTRIC, LLC, and  
GREGG A. D'ATTILE,

Defendant.

\_\_\_\_\_ /

**COMPLAINT**

COMES NOW, Plaintiff, JESSE SCHWENKER, by and through her undersigned counsel, and sues the Defendants, ART PLUMBING AIR CONDITION AND ELECTRIC, LLC (“ART”), and GREGG A. D’ATTILE and alleges as follows:

**INTRODUCTION**

1. This is a proceeding for damages to redress the deprivation of rights secured to the Plaintiff by the Family and Medical Leave Act, 29 U.S.C. 2601-2654 (“FMLA”).

**JURISDICTION AND VENUE**

2. The Court has jurisdiction over their controversy based upon the FMLA, and venue is proper as all acts described herein occurred within this judicial district.

**PARTIES**

3. At all times material hereto, the Plaintiff was/is a citizen of the United States, sui juris, and an employee of the Defendants.

4. At all times material hereto, the Plaintiff was an employee and member of a protected class within the meaning of the FMLA.

5. At all times material hereto, Defendant, ART was a Florida Corporation doing business and services in this judicial district, was the employer or former employer of the Plaintiff, and is an employer as defined by the FMLA.

6. That at all times material hereto, Defendant, GREGG A. D'ATTILE, individually, acted directly in the interests of his employer, the Defendant, ART, in relation to the Plaintiff, and this individual Defendant exercised the requisite legal control and otherwise administered the illegal acts as described herein on behalf of the Defendant, ART PLUMBING AIR CONDITION AND ELECTRIC, LLC.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7. The Plaintiff has exhausted and fulfilled all conditions precedent to the institution of this action.

#### **STATEMENT OF FACTS**

8. The Plaintiff was an employee for the Defendants since November 2020.

9. In the beginning of January of 2022, Plaintiff notified the Defendants that she needed to go to New York the following month to take care of her father for several months, who was having a major surgery and would be recovering.

10. However, on January 17, 2022, Plaintiff went to a customer's home with another employee (Matt Lopez) for plumbing work, only to be sexually harassed by this customer with very sexually personal details, such as wanting to cheat on her husband and flashing her breasts.

11. Plaintiff told the customer to stop, who in turn made a ludicrous complaint that Plaintiff "exposed herself" to the customer.

12. The Defendants then terminated Plaintiff on January 18, 2022 despite Plaintiff informing the Defendant that such incident never happened.

13. In fact, the customer called the police, who quickly dropped the investigation determining it was “nonsense”.

14. However, the Defendants’ response was that she was going to be fired anyway because Plaintiff had to go to New York to take care of her father, and that the Defendant did not need her slacking off over the next month.

### **COUNT I**

#### **FMLA INTERFERENCE-ART**

15. The Plaintiff incorporates by reference paragraphs 1-14 herein.

16. At all times material to this lawsuit, the Plaintiff was entitled to leave under the FMLA.

17. The Defendant, ART, unlawfully interfered with the Plaintiff’s exercise of her FMLA rights by failing to provide FMLA benefits to Plaintiff and terminating her before her leave could commence.

18. As a direct and proximate result of the Defendant’s unlawful treatment, the Plaintiff has suffered damages and will continue to suffer irreparable injury and damages in the future, under the FMLA.

19. The Plaintiff is entitled to an award of reasonable attorney’s fees, expert fees, costs and expenses related to this litigation under the FMLA.

WHEREFORE, the Plaintiff, JESSE SCHWENKER, requests that judgment be entered against the Defendant, ART PLUMBING AIR CONDITION AND ELECTRIC, LLC, for all

damages recoverable under the FMLA, in addition to all litigation expenses and costs, including attorneys' fees and any other lawful and equitable relief this Court deems to be just and proper.

## **COUNT II**

### **FMLA INTERFERENCE-GREGG A. D'ATTILE**

20. The Plaintiff incorporates by reference paragraphs 1-14 herein.

21. At all times material to this lawsuit, the Plaintiff was entitled to leave under the FMLA.

22. The Defendant, GREGG A. D'ATTILE, unlawfully interfered with the Plaintiff's exercise of her FMLA rights by failing to provide FMLA benefits to Plaintiff and terminating her before her leave could commence.

23. As a direct and proximate result of the Defendant's unlawful treatment, the Plaintiff has suffered damages and will continue to suffer irreparable injury and damages in the future, under the FMLA.

24. The Plaintiff is entitled to an award of reasonable attorney's fees, expert fees, costs and expenses related to this litigation under the FMLA.

WHEREFORE, the Plaintiff, JESSE SCHWENKER, requests that judgment be entered against the Defendant, GREGG A. D'ATTILE, for all damages recoverable under the FMLA, in addition to all litigation expenses and costs, including attorneys' fees and any other lawful and equitable relief this Court deems to be just and proper.

## **COUNT III**

### **FMLA RETALIATION-ART**

25. The Plaintiff incorporates by reference paragraphs 1-14 herein.

26. At all times material to this lawsuit, the Plaintiff was entitled to leave under the

FMLA.

27. As a result of this exercise of the FMLA, the Defendant, ART, intentionally, willfully and unlawfully retaliated against the Plaintiff, in violation of the FMLA.

28. That the Defendant's decision to adversely affect the Plaintiff was both connected to, and in response to the Plaintiff's FMLA coverage.

29. As a direct and proximate result of the Defendant's unlawful treatment, the Plaintiff has suffered damages and will continue to suffer irreparable injury and damages in the future, under the FMLA.

30. The Plaintiff is entitled to an award of reasonable attorney's fees, expert fees, costs and expenses related to this litigation under the FMLA.

WHEREFORE, the Plaintiff, JESSE SCHWENKER, requests that judgment be entered against the Defendant, ART PLUMBING AIR CONDITION AND ELECTRIC, LLC, for all damages recoverable under the FMLA, in addition to all litigation expenses and costs, including attorneys' fees and any other lawful and equitable relief this Court deems to be just and proper.

#### **COUNT IV**

##### **FMLA RETALIATION-GREGG A. D'ATTILE**

31. The Plaintiff incorporates by reference paragraphs 1-14 herein.

32. At all times material to this lawsuit, the Plaintiff was entitled to leave under the FMLA.

33. As a result of this exercise of the FMLA, the Defendant, GREGG A. D'ATTILE intentionally, willfully and unlawfully retaliated against the Plaintiff, in violation of the FMLA.

34. That the Defendant's decision to adversely affect the Plaintiff was both connected to, and in response to the Plaintiff's FMLA coverage.

35. As a direct and proximate result of the Defendant's unlawful treatment, the Plaintiff has suffered damages and will continue to suffer irreparable injury and damages in the future, under the FMLA.

36. The Plaintiff is entitled to an award of reasonable attorney's fees, expert fees, costs and expenses related to this litigation under the FMLA.

WHEREFORE, the Plaintiff, JESSE SCHWENKER, requests that judgment be entered against the Defendant, GREGG A. D'ATTILE, for all damages recoverable under the FMLA, in addition to all litigation expenses and costs, including attorneys' fees and any other lawful and equitable relief this Court deems to be just and proper.

**DEMAND FOR JURY TRIAL**

The Plaintiff demands a jury trial.

Dated: March 10, 2022.

Respectfully submitted,

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